IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 24TH APRIL 2007 / 4TH VAISAKHA 1929

WP(C).No. 33211 of 2006(D)

PETITIONER:

G.JAYACHANDRAN NAIR,
S/O.S.GOPALA PILLAI, AGED 45 YEARS,
PRINCIPAL, RAJA RAVI VARMA GIRLS HIGHER
SECONDARY SCHOOL, KILIMANOOR, TRIVANDRUM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. **THE DIRECTOR OF HIGHER SECONDARY**
EDUCATION, HOUSING BOARD BUILDING,
SANTHI NAGAR, TRIVANDRUM.

3. **THE MANAGER,**
RAJA RAVI VARMA GIRLS HIGHER SECONDARY SCHOOL,
KILIMANOOR, TRIVANDRUM.

4. **SMT.P.NIRMALA, HIGHER SECONDARY**
SCHOOL TEACHER, RAJA RAVI VARMA GIRLS
HIGHER SECONDARY SCHOOL, KILIMANOOR, TRIVANDRUM.

BY ADV. SRI.J.JULIAN XAVIER - R4
SRI.FIROZ K.ROBIN
SRI.M.V.BOSE
BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/03/2007, ALONG WITH WPC NO. 33260 OF 2006 THE COURT ON 24.04.2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.33211/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WA.NO.2134/05 DT.5.1.06.

EXT.P2:- COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DT.1.11.06.

EXT.P3:- COPY OF THE GO(RT) NO.5359/06/G. EDN. OF THE GOVERNMENT DT.8.12.066

EXT.P4:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.13793/04 DT.9.11.05.

EXT.P5:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IIN WP(C) NO.12547/06 DT.23.8.06.

EXT.P6:- COPY OF THE MINUTE REPORT OF THE SELECTION COMMITTEE DT.21.2.05.

EXT.P7:- COPY OF THE LETTER OF THE MANAGER DT.14.7.05.

EXT.P8:- COPY OF THE ORDER NO.C6-2853/HSE/99 OF THE DIRECTOR OF HIGHER SECONDARY.DT.267.3.99.

EXT.P9:- COPY OF THE ORDER NO.B5-/19882/01/HSE OF -DO- -DO- . DT.28.7.02.

EXT.P10:- COPY OF THE ORDER NO.B5-19882/02/HSE OF -DO- DO-

RESPONDENTS EXHIBITS

EXT.R4(i):- COPY OF THE APPOINTMENT ORDER ISSUED BY THE 3RD RESPONDENT DT.1.9.98.

EXT.R4(ii):- COPY OF THE ORDER DT.11.2.05.

EXT.R4(iii):- COPY OF THE SERVICE DETAILS OF 4 TEACHERS AS ON 12.11.01, THE DATE OF COMING INTO FORCE OF THE SPECIAL RULES

/TRUE COPY/

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K.K. DENESAN, J.

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W.P(C)Nos.33211 & 33260 OF 2006
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Dated this the 24th April, 2007

J U D G M E N T

The petitioner in W.P.(C) No. 33211 of 2006 is functioning as the Principal of Raja Ravi Varma Girls Higher Secondary School, Kilimanoor, Trivandrum (hereinafter referred to for short as RRVGHS) and the petitioner in W.P.(C) No. 33260 of 2006 is the Manager of that school. The 4th respondent in the above two writ petitions has been found to be the proper person to be appointed as the Principal of the above named school vide G.O.(Rt.) No. 5359/2006/G.Edn. dated 8-12-2006 passed by the 1st respondent. The above Govt. Order is marked as Ext. P3 in W.P.(C) No. 33211 of 2006 and as Ext. P8 in W.P.(C) No. 33260 of 2006 and is under challenge at the instance of the petitioners. Hence, these two writ petitions are disposed of by this common judgment.

2. The impugned Govt. Order was issued pursuant to directions issued by a Division Bench in W.A. No. 2134 of 2005 and connected cases. The operative part of the

above judgment reads:

> "Persons, who might be interested in the matter, will have the liberty to move the Governmental Authority appropriately. We do not find that there are reasons to restrict any of such personnel to agitate appropriately in the matter in respect of their respective stand and all relevant contentions. Status quo as on today will continue till the matter is finally decided by the appropriate authority."

The petitioners feel aggrieved by the findings entered by the Government in paragraphs 8 and 9 of the impugned order. Those paragraphs are reproduced for easy reference:

> "The placement of Shri. Jayachandran Nair as Principal on 21-7-2003 was against the orders prevailing then, since Smt. Nirmala was the senior most Higher Secondary School Teacher in the school. Moreover, he was not eligible for placement since he had not acquired the minimum teaching experience. The Manager ought to have given placement to Smt. Nirmala on the strength of the judgment dated 4-11-2004. As the management had not done anything in this regard, Smt. Nirmala had to move Government and Government on 8-4-2005 directed the manager to conduct fresh selection process for the placement of Principal strictly as per rules. But before

> the issuance of the aforesaid Government Order, the Manager had constituted a selection committee, which selected Shri. Jayachandran Nair and he was appointed as Principal on 23-2-2005. It is evident from the above that the Manager had intentionally delayed appointment to the post of Principal and later proceeded with the selection process when Shri. Jayachandran Nair acquired the minimum teaching experience of 12 years. Smt. Nirmala is the seniormost among the Higher Secondary School Teachers eligible for the post of Principal. It is obvious that the existing rules had not been applied in a fair and just manner.
>
> In the circumstances, the approval of appointment of Shri. Jayachandran Nair as Principal, R.R.V.G.Higher Secondary School, Kilimanoor is set aside. The Manager is directed to consider the claim of Smt. P. Nirmala properly to the post of Principal of the school at the earliest."

3. The petitioner in W.P.(C) No. 33211 of 2006, Shri. Jayachandran Nair,commenced service in the school as Upper Primary School Assistant with effect from 1-6-1992. He was promoted as High School Assistant with effect from 7-6-1993 and later on appointed as Higher Secondary School Teacher with effect from 24-8-1998.

The Manager placed him in the post of Principal of the Higher Secondary School with effect from 23-2-2005. The 4th respondent contended that she was the Teacher eligible and qualified to be appointed as Principal. She commenced service as Upper Primary School Assistant with effect from 6-8-1980 and was promoted as H.S.A. with effect from 13-3-1987. She was appointed as Higher Secondary School Teacher with effect from 24-8-1998. She claims that she is senior to the petitioner in W.P.(C) No. 33211 of 2006. She is a Post-graduate with B.Ed. qualification. She completed 12 years of service and was qualified to be appointed as Principal of the Higher Secondary School as per the Special Rules incorporated as Chapter XXXII of the Kerala Education Rules. Chapter XXXII of K.E.R. came into force with effect from 12-11-2001.

4. R.R.V.G.H.S. was upgraded as Higher Secondary School in the year 1998-99. One Smt. Vasanthakumari Amma was appointed by the Manager as the Principal-in-

charge. Smt. Vasanthakumari Amma did not possess the requisite qualifications to hold the post of Principal of the Higher Secondary School. The 4th respondent staked a claim for the post of Principal of the Higher Secondary School. But the Manager did not respond to the request made by the 4th respondent. Hence, she approached this Court by filing O.P. No. 12210 of 2003. While the above writ petition was pending, the Manager appointed Shri. G. Jayachandran Nair, the petitioner in W.P.(C) No. 33211 of 2006 as the Principal. Hence, Shri. G. Jayachandran Nair was impleaded as a party in that writ petition on the respondent's array. The writ petitions in which questions relating to the appointment of Principals of Higher Secondary Schools had been pending were referred to a Full Bench of this Court. In ***Aided Higher Secondary School Teachers Association v. State of Kerala*** (2005 (1) KLT 94) the Full Bench answered the question in the following words:

"It is pointed out that some of the Headmasters who were qualified as on the date of coming into force of the Rules, though not appointed in the ratio prescribed as per the Rules, and are continuing even today should be given an equitable relief. It is true that Headmasters who were redesignated as Principals on the basis of ad hoc orders and are not educationally qualified, have to go back as Headmasters. They will continue as Headmasters of High School Division upto standard 10 and they cannot claim to be the Principals of Higher secondary Schools. But those Headmasters who are educationally qualified when Special Rules framed and are continuing as Principal even today shall be allowed to continue, but their ratio has to be adjusted in the subsequent or other vacancies. But that benefit is not available to those Headmasters who are not continuing as on today as Principals and those Headmasters who were not educationally qualified when relevant rules came into force. After framing of the rules recruitment has to be made strictly as per the statutory rules. Hence those persons appointed or placed as Principals after statutory rules came into force have to vacate the office. We also make it clear that the post of Principal is compulsory in the higher Secondary Schools as without the head of the institution, it cannot function. Post of Principal is an essential pivotal post. Therefore, Government is directed to give sanction and approval to the post of Principal expeditiously so that no Higher secondary School shall work without a regular

> Principal. That post is made compulsory as per the Rules and classified as category No:1. We also direct the Managers to make appointment of Principal strictly on the basis of the rules framed as per Chapter XXXII and submit the matter for approval to the Government. It is for the Government to fix the scale of pay of Principal. It can be on a special scale of pay or special allowance to that of a Senior Higher Secondary School Teacher in category No:II. These are matters of policy and we are not making any direction regarding fixation of scale of pay. If the appointments are made as per the Rules, that should be approved, if not already approved. The services of Headmasters who are continuing without the requisite qualification as prescribed under Chapter XXXII on the date of coming into force of the Rules, should be terminated forthwith and they will go back as Headmasters. Management and Educational Authority are also directed to see that appointments are made strictly as per the Rules after enforcement of the Statutory Rules."

In deference to the principles laid down in the Full Bench decision, Government issued G.O.(MS) No. 43/2005/G.Edn. dated 11-2-2005. As far as aided Higher Secondary Schools are concerned, the following directions were issued in the above Govt. Order:

> "(i) The Aided Higher Secondary School Managers will take immediate steps to give placement in the post of Principal strictly in accordance with Special Rules if the same has not been made so far.
>
> (ii) The Headmasters who were qualified as on 12-11-2001 in the post of Principal and continuing as Principal will be allowed to continue.
>
> (iii) The Headmasters who are continuing as Principals without the requisite qualification on the date of coming into force of the Special Rules, will be reverted immediately as Headmaster."

5. On 21-2-2005 the Manager constituted a selection committee. Four teachers were asked to attend the selection committee including Shri. G. Jayachandran Nair (petitioner in W.P.(C) No. 33211 of 2006) and the 4th respondent. The committee selected Shri. G. Jayachandran Nair as the person eligible and qualified to be appointed as the Principal. According to the 4th respondent, the decision of the selection committee is illegal because as on the date of occurrence of the vacancy in the post of Principal she

alone was qualified to hold that post. She had completed 12 years service as stipulated in the Special Rules whereas the petitioner in W.P.(C) No. 33211 of 2006 had to his credit only 8 years and 5 months service.

6. According to the petitioners, the 4th respondent cannot make a successful claim for appointment to the post of Principal in preference to Shri. G. Jayachandran Nair on the ground of her seniority, because regular posts of Principals were created only as per Govt. Order dated 6-1-2006 and that there was no regular post of Principal in R.R.V.G.H.S. School prior to that. It was contended that the post of Principal as contemplated in the Special Rules was occupied by Smt. Vasanthakumari Amma as a stop gap arrangement as Principal-in-charge till 21-7-2003. According to the petitioners though the Special Rules came into force with effect from 12-11-2001 with the post of Principal included as one of the categories prescribed therein,

formal orders sanctioning one post of Principal in R.R.V.G.H.S. School, Kilimanoor were passed only as per Govt. Order dated 6-1-2006.

7. The Manager of the school points out that the appointment of Shri. G. Jayachandran Nair as the Principal pursuant to the selection by the competent committee was approved by the 2nd respondent as per order dated 26-7-2005 passed by the 2nd respondent.

8. The 4th respondent filed W.P.(C) No. 9722 of 2005 challenging the orders issued by the Manager of the school and the 2nd respondent-Director. The said writ petition was disposed of on 31-8-2005 by quashing the decision of the Selection Committee dated 21-2-2005 and order dated 26-7-2005 granting approval. The learned Judge directed the 2nd respondent to decide as to who among the two, Shri. G. Jayachandran Nair and Smt. Nirmala, was eligible to be selected and appointed as Principal on the date of occurrence of vacancy. Three writ appeals were filed against the judgment in

W.P.(C) No. 9722 of 2005. By a common judgment dated 5-1-2006, a Division Bench of this Court disposed of the above three writ appeals, as stated in para 2 of this judgment.

9. I have heard learned counsel for the petitioners, learned counsel for the 4th respondent and learned Senior Govt. Pleader for respondents 1 and 2.

10. Two questions emerged for consideration, namely, (1) Whether the impugned Govt. order is liable to be set aside for want of authority and (2) Whether the date of occurrence of vacancy of Principal in R.R.V.G.H.S. School, Kilimanoor is 12-11-2001 or 6-1-2006.

11. According to the petitioners, Govt. Order dated 8-12-2006 (Ext. P3 in W.P.(C) No. 33211 of 2006 and Ext. P8 in W.P.(C) No. 33260 of 2006) has been issued by the Government without the authority of law. The above argument is raised on the ground that Chapter XXXII of the Kerala Education Rules does not confer

power on the Government to resolve disputes between teachers inter se or disputes between the Manager and the teachers. The power of revision conferred on the Government as per the provisions in other Chapters of KER is not available to the Government in the matter of disputes relating to the service conditions of Higher Secondary School Teachers. According to the petitioners, Chapter XXXII of K.E.R. is a self-contained Code as far as the dispute resolving power is concerned, and therefore, the impugned Order is authored by an incompetent authority. According to the petitioners, the expression used in the judgment of the Division Bench is "Governmental Authority" and not Government, and therefore, it cannot be said that the Government has acted as directed in the judgment.

12. The above contention is sought to be met by the learned Govt. Pleader and the learned counsel for the 4th respondent stating that there is no inherent or patent lack of power in the Government to resolve

disputes between the Higher Secondary School Teachers inter se or between the Teachers and the Manager. Kerala Education Rules were framed by the Government in exercise of the power conferred by Section 36 of the Kerala Education Act,. 1958. The school managed by the petitioner in W.P.(C) No. 33260 of 2006 is an aided private school which consists of Primary, Upper Primary, Secondary and Higher Secondary Schools. Though provisions contained in all the chapters of the K.E.R. may not apply to a Higher Secondary School, Rule 3 of Chapter I of K.E.R. applies to all schools and those connected with the functioning of the schools. The said Rule reads:

> "3. Where the Government are satisfied that the operation of any rule under these Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner."

The reference to "these Rules" takes within its fold

rules contained in Chapter XXXII as well. I find force in the above submission. The impugned Govt. Order cannot be said to be an order issued by an authority alien to the rules. There is no patent lack of jurisdiction. The Division Bench also used the expression "Governmental Authority". It is therefore idle to contend that the Government exercised the power to issue the impugned order without jurisdiction or authority. The petitioners did not raise any objection at any point of time while the Government exercised the power and issued the impugned order. Even in the writ petition, no such ground is urged. In fact, it is only during the course of hearing that contention on the score of want of jurisdiction is raised. Hence, the objection raised on the ground of want of jurisdiction is liable to be repelled. I do so.

13. The next question for consideration is whether the selection and appointment of the petitioner in W.P. (C) No. 33211/06 as Principal of the school is entitled

to be upheld. It is true that the issue relating to the date of occurrence of vacancy has not been specifically gone into by the Government. I do not, however, think that it is necessary to remit the matter back to the Government or to the 2nd respondent to enter into findings on that score afresh, because the parties had been before this Court agitating and re-agitating these questions on different occasions and they have effectively joined issues on that aspect in this writ petition also.

14. Learned counsel for the petitioners have referred to Government Orders issued from time to time to emphasise that a regular post of Principal comes into existence only when formal sanction is accorded. It is also contended that the mere framing of a rule prescribing the staff pattern or the categories of posts will not ipso facto lead to the presumption that all the posts referred to therein would come into existence simultaneously. Inviting my attention to

G.O. dated 6-1-2006, learned counsel for the petitioners emphasised the point that the post of Principal was sanctioned in R.R.V.G.H.S. School only with effect from 6-1-2006.

15. As a general proposition of law, I find merit in the above contentions. However, as rightly contended by the learned counsel for the 4th respondent, this Court cannot shut its eyes to the observations and findings made by a Division Bench of this Court in ***Shaji v. Ramachandran*** (2003 (2) KLT 814). Learned counsel for the 4th respondent read before me paragraphs 21 to 25 of the aforesaid judgment. I feel that all those paragraphs are worth reproducing. However, for the sake of brevity, paragraph 23 alone is reproduced. The same reads:

> "As already noticed R.3 provides that "the service of every aided Higher Secondary School shall consist of all or any of the.... categories of posts as the Director may sanction". The post of Principal is a solitary post in category 1. Categories 2 and 3 relate to the appointment of school

> teachers in two different scales. These relate to 39 subjects. Thus, the Rule clearly provides that there shall be a Principal and teachers. So far as the sanction of the post is concerned, in our view, the Director has no discretion in the matter of office of the Principal. He can only make a choice in respect of the other categories whereby he can lay down that there may be no teacher to teach the subjects like German, Latin, Russian languages or those in which the number of students is not adequate. However it shall not be open to the Director to say that the School shall function without a Principal who alone can be the Academic and Administrative Head. In view of this position, the contention that the appointment of the 6th respondent cannot be approved, as the post of Principal has not been sanctioned, is wholly untenable. It cannot be sustained."

16. The above Division Bench judgment dealing with a similar question, is a binding judicial pronouncement as far as a Single Bench is concerned. According to the Division Bench, a distinction has to be drawn between the creation or the existence of an essential post like the Principal and posts like H.S.S.Ts. As I understand, the post of Principal shall be deemed to be

there in every Higher Secondary School, the moment the Special Rules prescribing such posts come into force. Hence, despite the various Government Orders brought to my notice by the learned counsel for the petitioners, I have to accept the contention advanced by the 4th respondent. I do so. The post of Principal shall be deemed to have come into existence with effect from 12-11-2001, the date of incorporation of the Special Rules in Chapter XXXII of K.E.R. Shri. G. Jayachandran Nair (petitioner in W.P.(C) No. 33211 of 2006) was not having the requisite period of service prescribed as essential teaching experience or service for appointment to the post of Principal on that date. On 21-3-2003 also the same position continued. Hence, I find no scope for interference with the impugned Govt. Order. Even assuming for the sake of argument that the Government has no power to pass the impugned order, I am of the opinion that the 4th respondent alone was qualified for the post of Principal on the date of

occurrence of the vacancy. Having regard to the fact that she was the seniormost H.S.S.T. in the school, the petitioner in W.P.(C) No. 33211 of 2006 who was not qualified on the date of occurrence of vacancy ought not to have been selected in preference to her. The selection committee has seriously erred in conducting the selection process without regard to the date of occurrence of vacancy and the qualification of the H.S.S.Ts. as on that date. Hence selection shall be conducted afresh eliminating unqualified hands. This shall be done forthwith and further steps taken in accordance with law.

In the result the writ petitions fail and are hereby dismissed.

K.K.DENESAN
JUDGE

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